

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

In re: Midnight Madness
Distilling, LLC,

Debtor.

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: Chapter 11
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: Case No. 21-11750 [mdc]
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OBJECTION TO DEBTOR'S PROPOSED SALE UNDER SECTION 363

THE UNITED STATES OF AMERICA, on behalf of its agency, the Alcohol, Tobacco, Tax and Trade Bureau (the "TTB"), objects to the debtor's propose sale of all or substantially all of its assets pursuant to 28 U.S.C. sec. 363 and 365 based on the following:

1. The debtor filed a bankruptcy petition seeking relief under Chapter 11 on June 21, 2021.
2. Debtor listed the TTB as an unsecured creditor in the amount of \$225,963 in its list of its top ten unsecured creditors.
3. On August 23, 2021, the debtor issued a revised Notice of Sale of Assets.
4. TBB only learned of the bankruptcy and the proposed sale upon receipt of the revised Notice this week.
5. As a result, TBB is determining its claim and will file a Proof of Claim in the coming weeks.
6. TBB objects to the sale to the extent that it violates 27 C.F.R. § 1.80 which states: "It is unlawful for any person to sell, offer to sell, contract to sell, or

otherwise dispose of distilled spirits in bulk, for nonindustrial use, except for export or to the classes of persons enumerated in §§ 1.82, 1.83, and 1.84.”

7. The debtor, a distilled spirits plant, must pay federal excise tax (FET) on the production of distilled spirits. See 26 U.S.C. § 5001(a)(1).
8. Debtor is obligated to file a tax return reflecting federal excise tax. See 26 U.S.C. §§ 5006 and 5061.
9. Further, the FET imposed by 26 U.S.C. § 5001(a)(1) is a secured debt under the provisions of 26 U.S.C. § 5004(a)(1), which imposes a first lien on the spirits from the time they are in existence as such, and until the tax is paid. Thus, under Section 5004, the United States Government is a secured creditor.
10. To the extent that the section 5004 lien is not sufficient to cover the assessed FET and any associated interest, TTB intends to classify its claim as being entitled to priority under 11 U.S.C. § 507(a)(8).
11. To the extent that debtor has continued to sell its distilled spirits inventory the collateral securing TTB’s claim is being diminished and TTB will seek cash collateral payments.

WHEREFORE, the United States respectfully requests the Court deny approval of the proposed 363 sale.

Respectfully submitted,

JENNIFER ARBITTIER WILLIAMS
Acting United States Attorney

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Dated: August 25, 2021

CERTIFICATE OF SERVICE

I hereby certify that on this date I caused a true and correct copy of the foregoing OBJECTION TO PROPOSED SALE UNDER SECTION 363 to be served upon the following by electronically filing to the Bankruptcy Court on this date:

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ANTHONY ST. JOSEPH
Assistant United States Attorney

Dated: August 25, 2021